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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/420,965	10/20/99	HEATH	E 1074.010US1

IM52/1019

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EXAMINER	
GORDON, B	
ART UNIT	PAPER NUMBER
1743	17

DATE MAILED: 10/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/420,965	HEATH ET AL.	
	Examiner	Art Unit	
	Brian R. Gordon	1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 1999* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 18-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12 and 18-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *8-10-01* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 136. Correction is required.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "144 and 146" has been used to designate both ends and locking ports and locking opening. Correction is required.

Specification

3. The disclosure is objected to because of the following informalities: on page 19, line 16 cap rotator is labeled as 516 rather than 1516.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the claim states "a cap and vessel positioning system comprising a threaded cap and a threaded vessel". There is no structure for securing the cap to the vessel and providing

movement or positioning of the cap or vessel. As claimed, it appears as if applicant is claiming a threaded cap and a threaded vessel.

6. Claim 10 and 11 recites the limitations "locking pocket and cap rotator" there is no structural relationship given within the claims for the limitations. It is unclear exactly what elements comprise these limitations. Are the limitations a part of the cap, vessel, or entire positioning system which is not clearly claimed? If the limitations are meant to be parts of the positioning system, then the entire positioning system should be claimed.

7. In regards to claims 1-12, the recitation a "positioning system" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is draw to a structure and the portion of claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951)

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Laguana Valderrama, US 5,811,060.

Laguana Valderrama discloses a flask 1 that has thread 9 on the outside as well as flange 10. The flask can be secured with cap 13 that comprises threads 11 and flange 12.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laguana Valderrama in view of Long Jr. US 6,059,134.

Laguana Valderrama does not disclose that the vessel and cap have multiple disjointed threads.

Long Jr. discloses a screw-off closure and container that have multiple discontinuous mating threads. As it appears in the figures each thread extends about 180 degrees around the vessel neck and each thread starts in a location about 90 degrees away from an adjacent thread. The device is manufactured from plastic and more preferably a high density plastic suitable for blow molding of the thread finish. The molding process makes it obvious that the design and location of the threads may be altered as so desired.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the device of Laguana Valderrama to include the principles of Long Jr. et al. in order to develop a closure that would indicate tampering of the seal.

14. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laguana Valderrama in view of Long as applied to claims 2-3 above, and further in view of Burns US 5,288,466.

The modified teachings of Valderrama do not specifically recite the molded material is polypropylene.

Burns discloses a microcollection assembly that is made of a clear molded thermoplastic material such as polyethylene, polypropylene, and polyvinyl chloride, which may be made to be hydrophilic.

It would have been obvious to one of the ordinary skill in the art to further modify the teachings of Valderrama to include the teachings of Burns in order to manufacture a hydrophilic cap and container.

15. Claims 1-12 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns in view of Long Jr.

Burns discloses a microcollection assembly that is made of a clear molded thermoplastic material such as polyethelene, polypropylene, and polyvinyl chloride, which may be made to be hydrophilic.

The microcollection assembly comprises a cap 54 that includes annular flange 61 that aligns with flange 55 that is formed on the outer surface of the container 52.

Burns does not disclose that the cap and container have disjointed threads.

Long Jr. discloses a screw-off closure and container that have multiple discontinuous mating threads. As it appears in the figures each thread extends about 180 degrees around the vessel neck and each thread starts in a location about 90 degrees away from an adjacent thread. The device is manufactured from plastic and more preferably a high density plastic suitable for blow molding of the thread finish. The molding process makes it obvious that the design and location of the threads may be altered as so desired.

It would have been obvious that if the threads of the cap and vessel are manufactured to a certain same length the securing of the vessel will be accomplished when the cap is turned in the direction of applying the cap that certain distance and removing the cap would occur when the cap is turned in the opposite direction that same certain length.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the device of Burns to include the principles of Long Jr. et al in order develop a closure which would indicate tampering of the seal.

As to claims 4 and 5, it would have also been obvious to manufacture the assembly to include flanges of any shape in the molding process.

As to the method claims 18-22, it would have been obvious that one of the ordinary skill in the art would have recognized that the caps are secured onto the container by placing the cap on the opening and turning the cap in a given direction and removing the cap to remove the contents can be accomplished by turning the cap in the opposite direction and the method can be repeated as so desired.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Northup, Starr, Burns (,096 and ,854), Repp et al., Dreyer et al., Magly, Sun et al., Repp, Haffner, Osip et al., Dewees et al., Wong et al., Williams et al., Hertrampf, Faulkner et al., Cipkowski, Goodale, Skiba et al., Drier, Doleman et al., and Golukhov et al., disclose cap and vessel closure assemblies.

Kitamoto and Barca disclose capping machines.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is (703) 305-0399. The examiner can normally be reached on M-F, with 2nd and 4th F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7719 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BRG
October 18, 2001

Jill Warden
Supervisory Patent Examiner
Technology Center 1700